



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1996

Mr. R. Mark Dietz
Dietz & Associates, P.C.
106 Fannin Avenue East
Round Rock, Texas 78664

OR96-0251

Dear Mr. Dietz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37087.

The Brushy Creek Municipal Utility District (the "district") received a request for portions of the district's Bond Issue Official Statement and the district's long-term Water Supply Study. Although the district has no objections to the disclosure of the requested information, you contend that the district is not required to make the requested copies pursuant to section 552.027 of the Government Code.

Section 552.027 provides:

Text of section as added by Acts 1995, 74th Leg., ch. 1035, § 12

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of,

incorporated into, or referred to in a rule or policy of a governmental body.

This section is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as, telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The legislative history of this provision notes that:

Section 552.002 excludes from the definition of public information books and other materials that are purchased commercially and maintained by governmental bodies that are also available as research tools elsewhere to any member of the public. Thus, although public library books are available for public use, the library staff will not be required to do research or make copies of books for members of the public.

STUDY GROUP REPORT TO THE SUBCOMM. ON OPEN RECORDS OF THE HOUSE STATE AFFAIRS COMM., 74th Leg., R.S., PROPOSED AMENDMENTS TO THE OPEN RECORDS ACT RELATING TO ACCESS TO ELECTRONIC INFORMATION 5 (1994) (emphasis added). Therefore, section 552.027 provides exemptions for the type of commercially available research material excluded from the definition of "public information" under section 552.002. "Public information," however, as defined by section 552.002 must be produced for inspection or duplication or both, Gov't Code § 552.221, unless an applicable subchapter C exception applies to the information, *id.* §§ 552.101-.124; *see* Open Records Decision Nos. 565 (1990), 549 (1990), 470 (1987).

We have reviewed the information submitted for our consideration. The requested information is not "a commercial book or publication purchased or acquired by the [district] for research purposes." The information appears to have been created for the district in connection with the transaction of official business. *See id.* § 552.002(a)(2) (defining public information). The fact that the information was created by commercial entities does not remove the information from the definition of public information.¹ As the district maintains copies of the information,² the district has access to the requested information regardless of its creation by commercial entities. *See* Open Records Decision

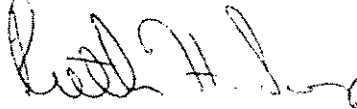
¹*See* Open Records Decision Nos. 518 (1989) (if governmental body employs agent to carry out task that it would otherwise have itself performed, information relating to that task that has been assembled or maintained by agent is subject to Open Records Act), 499 (1988) (generally, records held by private attorney that are related to legal services performed by attorney at request of governmental body are subject to Open Records Act), 444 (1986) (where independent contractor acts on behalf of governmental body in collecting information, information may be said to have been "collected" by governmental body for purposes of Open Records Act).

²*See* Open Records Decision No. 558 (1990) (if records are developed and maintained by consultant, but governmental body is entitled to examine them, they are "maintained" by governmental body for purposes of Open Records Act).

No. 558 (1990) (where governmental body has right of access to or ownership of information prepared by outside entity, information is subject to Open Records Act). Accordingly, the district is required to provide access to or copies of the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/LBC/ch

Ref: ID# 37087

Enclosures: Submitted documents

cc: Mr. John McLemore
8400 Cornerwood Dr.
Austin, Texas 78717
(w/o enclosures)